

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 568**

**Introduced by Assembly Member Garcia**

***(Coauthors: Assembly Members Benoit, Berg, Bogh, Daucher, DeVore, Emmerson, Haynes, Houston, Keene, La Suer, Lieber, Maze, Montanez, Parra, Plescia, Sharon Runner, Spitzer, Tran, Villines, and Wyland)***

***(Coauthor: Senator Ducheny)***

February 16, 2005

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An act to add Section 121022 to the Health and Safety Code, relating to HIV.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, as amended, Garcia. Rapid HIV tests.

*Existing law requires a licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery to obtain or cause to be obtained a blood specimen of the woman and to submit that blood specimen to a laboratory for an HIV test. Prior to obtaining a blood specimen, existing law requires the physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery to ensure that the woman is informed that she has a right to accept or refuse the testing. Existing law requires the acceptance of testing for HIV to be documented in writing and signed by the patient.*

Existing law authorizes the State Department of Health Services, through its Office of AIDS and the authorized agents of the office, to participate in a rapid human immunodeficiency virus (HIV) test research program conducted with the federal Centers for Disease

Control and Prevention, involving innovative HIV testing and counseling programs. Under the rapid HIV test research program, existing law authorizes the department to perform and report clinical test results using a rapid HIV test for diagnosis, prior to test approval by the federal Food and Drug Administration (FDA). However, existing law requires test performance and reporting to be done only to the extent allowed under that device's investigational approval by the FDA and pursuant to a California Health and Human Services Agency Institutional Review Board-approved research protocol.

~~This bill would declare the Legislature's intent to enact legislation to allow FDA approved rapid HIV testing methods to be offered to women at annual obstetrics-gynecology appointments and at first prenatal appointments.~~

*At the time of a woman's annual gynecological examination, this bill would require the physician and surgeon or other person performing the annual gynecological examination to offer to test the woman for the presence of HIV through a blood specimen or a rapid HIV test. The bill would require the acceptance of testing for HIV to be documented in writing and signed by the patient. The bill would prescribe procedures for the conduct of the HIV test. After the results of the HIV test been received, the bill would require the physician and surgeon or other person attending the woman at the time the results are received to ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the woman's health, including any followup care that is indicated.*

*This bill would require a positive test result to be reported to the local health officer as a reportable disease or condition. To the extent this bill would expand the duties of local health officers, it would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

~~SECTION 1. It is the Legislature's intent to enact legislation in subsequent amendments to allow rapid human immunodeficiency virus testing methods approved by the federal Food and Drug Administration to be offered to women at annual obstetrics gynecology appointments and at first prenatal appointments.~~

*SECTION 1. Section 121022 is added to the Health and Safety Code, to read:*

*121022. (a) At the time of a woman's annual gynecological examination, the physician and surgeon or other person performing the annual gynecological examination shall offer to test the woman for the presence of the human immunodeficiency virus (HIV) through a blood specimen or a rapid HIV test as authorized pursuant to Section 120917.*

*(b) The physician and surgeon or other person performing the annual gynecological examination shall ensure that the woman is informed of the routine nature of the blood test, the purpose of the testing, the risks and benefits of the test, the risk of transmission of HIV, that approved treatments are known to decrease the risk of transmission of HIV, and that the woman has a right to accept or refuse this testing. The acceptance of testing for HIV shall be documented in writing on the form developed by the department and the Office of AIDS pursuant to Section 125092, or on a form that is substantially equivalent in content, and signed by the patient. A copy of this form shall be maintained in the medical record.*

*(c) (1) If the woman chooses to be tested for HIV through a blood test, the physician and surgeon or other person performing the annual gynecological examination shall obtain a blood specimen from the woman and submit it to a clinical laboratory licensed by the department or to an approved public health laboratory for a test to determine the presence of HIV, and the results shall be reported to both of the following:*

*(A) A physician and surgeon or other person performing an annual gynecological examination who ordered the test, and who shall subsequently inform the woman tested.*

*(B) A positive test result shall be reported to the local health officer, with the information required and within the timeframes*

1 established by the department, pursuant to Chapter 4  
2 (commencing with Section 2500) of Title 17 of the California  
3 Code of Regulations.

4 (2) If the woman chooses to be tested for HIV through a rapid  
5 HIV test, the test shall be conducted only as authorized pursuant  
6 to Section 120917.

7 (d) After the results of the HIV test been received, the  
8 physician and surgeon or other person attending the woman at  
9 the time the results are received shall ensure that the woman  
10 receives information and counseling, as appropriate, to explain  
11 the results and the implications for the woman's health,  
12 including any followup care that is indicated. If the woman tests  
13 positive for HIV antibodies, she shall also receive, whenever  
14 possible, a referral to a provider, provider group, or institution  
15 specializing in care for HIV positive women. Health care  
16 providers are also strongly encouraged to seek consultation with  
17 other providers specializing in the care of HIV positive women.

18 (e) HIV information and counseling provided pursuant to  
19 subdivision (d) shall include, but shall not be limited to, all of the  
20 following:

21 (1) A description of the modes of HIV transmission.

22 (2) A discussion of risk reduction behavior modifications  
23 including methods to reduce the risk of transmission.

24 (3) If appropriate, referral information to other HIV  
25 prevention and psychosocial services including anonymous and  
26 confidential test sites approved by the Office of AIDS.

27 (f) Nothing in this section shall be construed to require  
28 mandatory testing. Any documentation or disclosure of HIV  
29 related information shall be made in accordance with Chapter 7  
30 (commencing with Section 120975) of Part 4 of Division 105  
31 regarding confidentiality and informed consent.

32 SEC. 2. If the Commission on State Mandates determines that  
33 this act contains costs mandated by the state, reimbursement to  
34 local agencies and school districts for those costs shall be made  
35 pursuant to Part 7 (commencing with Section 17500) of Division  
36 4 of Title 2 of the Government Code.